

§ 28.16

(b) *Increase in capital equivalency deposits.* For prudential or supervisory reasons, the OCC may require, in individual cases or otherwise, that a foreign bank increase its CED above the minimum amount. For example, the OCC may require an increase if a Federal branch or agency of the foreign bank increases its leverage through the establishment, acquisition, or maintenance of an operating subsidiary.

(c) *Value of assets.* The obligations referred to in paragraph (a) of this section must be valued at principal amount or market value, whichever is lower.

(d) *Deposit arrangements.* A foreign bank should require its depository bank to segregate its CED on the depository bank's books and records. The funds deposited and obligations referred to in paragraph (a) of this section that are placed in safekeeping at a depository bank to satisfy a foreign bank's CED requirement:

(1) May not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum;

(2) Must be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC for purposes of section 8 of the Federal Deposit Insurance Act, 12 U.S.C. 1818; and

(3) Must be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) *Maintenance of capital equivalency ledger account.* Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

[61 FR 60363, Nov. 27, 1996, as amended at 66 FR 49098, Sept. 26, 2001; 67 FR 4326, Jan. 30, 2002; 67 FR 41620, June 19, 2002]

EFFECTIVE DATE NOTE: At 68 FR 70700, Dec. 19, 2003, § 28.15, was amended by revising paragraph (a)(1)(ii); redesignating paragraph (a)(1)(iv) as (a)(1)(v); revising paragraph (a)(1)(iii) by removing the word "or" at the end; adding a new paragraph (a)(1)(iv); revising newly redesignated paragraph (a)(1)(v); adding a new paragraph (a)(3); redesignating paragraph (e) as (f); and adding a new para-

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graph (e), effective Jan. 20, 2004. For the convenience of the user, the revised and added text is set forth as follows:

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(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other Group of Ten country;

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument;

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify to be included in the CED.

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(3) *Exceptions.* In determining the amount of the CED, the OCC excludes liabilities of an international banking facility (IBF) to third parties and of a Federal branch of a foreign bank to an IBF. The OCC may exclude liabilities from repurchase agreements on a case-by-case basis.

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(e)(1) *Deposit and Consolidation.* As provided in 12 U.S.C. 3102(g), a foreign bank with a Federal branch or agency shall deposit its CED into an account in a bank that is located in the state in which the Federal branch or agency is located. For this purpose, such depository bank is considered to be located in those states in which it has its main office or a branch. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

(2) *Calculation.* The total amount of the consolidated CED shall continue to be calculated on an office-by-office basis.

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§ 28.16 Deposit-taking by an uninsured Federal branch.

(a) *Policy.* In carrying out this section, the OCC shall consider the importance of according foreign banks competitive opportunities equal to those of United States banks and the availability of credit to all sectors of the United States economy, including international trade finance.

(b) *General.* An uninsured Federal branch may accept initial deposits of less than \$100,000 only from:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who are not citizens of the United States, but are residents of the United States, and are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of an individual) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other non-deposit banking services within the past 12 months, or with whom the branch or foreign bank has a written agreement to extend credit or provide such services within 12 months after the date of the initial deposit;

(4) Foreign businesses and large United States businesses;

(5) Foreign governmental units, including political subdivisions, and recognized international organizations;

(6) Federal and state governmental units, including political subdivisions and agencies thereof;

(7) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for transmission of funds, or transmission of funds by any electronic means;

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.4, including persons engaged in certain international business activities; and

(9) Any other depositor if:

(i) The aggregate amount of deposits received from those depositors does not exceed, on an average daily basis, 1 percent of the average of the branch's deposits for the last 30 days of the most recent calendar quarter, excluding deposits of other offices, branches, agencies, or wholly owned subsidiaries of the foreign bank; and

(ii) The branch does not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public.

(c) *Application for an exemption.* A foreign bank may apply to the OCC for an

exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

(1) The types, sources, and estimated amounts of such deposits and explain why the OCC should grant an exemption; and

(2) How the exemption maintains and furthers the policies described in paragraph (a) of this section.

(d) *Aggregation of deposits.* For purposes of paragraph (b)(9) of this section, a foreign bank that has more than one Federal branch in the same state may aggregate deposits in all of its Federal branches in that state, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

(e) *Notification to depositors.* A Federal branch that accepts deposits pursuant to this section shall provide notice to depositors pursuant to 12 CFR 346.7, which generally requires that the Federal branch conspicuously display a sign at the branch and include a statement on each signature card, passbook, and instrument evidencing a deposit that the deposit is not insured by the Federal Deposit Insurance Corporation (FDIC).

(f) *Transition period.* (1) An uninsured Federal branch may maintain a deposit lawfully accepted under the exemptions existing prior to July 1, 1996 if the deposit would qualify for an exemption under paragraph (b) of this section, except for the fact that the deposit was made before July 1, 1996.

(2) If a deposit lawfully accepted under the exemption existing prior to July 1, 1996 would not qualify for an exemption under paragraph (b) or (c) of this section, the uninsured Federal branch must terminate the deposit no later than:

(i) In the case of time deposits, the maturity of a time deposit or October 1, 1996, whichever is longer; or

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(ii) In the case of all other deposits, five years after July 1, 1996.

(g) *Insured banks in United States territories.* For purposes of this section, the term “foreign bank” does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands whose deposits are insured by the FDIC pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*

EFFECTIVE DATE NOTES: 1. At 68 FR 70131, Dec. 17, 2003, § 28.16 was amended in paragraph (e), by removing the term “12 CFR 346.7” and adding in its place the term “12 CFR 347.207”, effective Jan. 16, 2004.

2. At 68 FR 70700, Dec. 19, 2003, § 28.16, was amended by revising paragraph (b)(8), effective Jan. 20, 2004. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) * * *

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.6, including persons engaged in certain international business activities; and

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§ 28.17 Notice of change in activity or operations.

Notice. A Federal branch or agency shall notify the OCC if:

(a) It changes its corporate title;

(b) It changes its mailing address;

(c) It converts to a state branch, state agency, or representative office; or

(d) The parent foreign bank changes the designation of its home state.

§ 28.18 Recordkeeping and reporting.

(a) *General.* A Federal branch or agency shall comply with applicable recordkeeping and reporting requirements that apply to national banks and with any additional requirements that may be prescribed by the OCC. A Federal branch or agency, and the parent foreign bank, shall furnish information relating to the affairs of the parent foreign bank and its affiliates that the OCC may from time to time request.

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(b) *Regulatory reports filed with other agencies.* A foreign bank operating a Federal branch or agency in the United States shall provide the OCC with a copy of reports filed with other Federal regulatory agencies that are designated in guidance issued by the OCC.

(c) *Maintenance of accounts, books, and records.* (1) Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations. The Federal branch or agency shall promptly provide any additional records requested by the OCC for examination or supervisory purposes.

(2) A foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state.

EFFECTIVE DATE NOTE: At 68 FR 70700, Dec. 19, 2003, § 28.18, was amended by adding paragraph (c)(3), effective Jan. 20, 2004. For the convenience of the user, the added text is set forth as follows:

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(c) * * *

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(3) A foreign bank with a Federal branch or agency in more than one state that consolidates its CEDs into one account in accordance with § 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit. A foreign bank with a consolidated CED shall maintain a book entry accounting of assets designated under the consolidated CED for each office of that foreign bank.

§ 28.19 Enforcement.

As provided by section 13 of the IBA, 12 U.S.C. 3108(b), the OCC may enforce compliance with the requirements of